guideline for effective referral of development applications
Acknowledgements

This Guide has been prepared by the Development Assessment Forum (DAF).

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The Development Assessment Forum (DAF) is an independent think tank and advisory forum of government, industry, and the professions, which develops and recommends leading practices for planning systems and development assessment in Australia.

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Part 1 – Context

What is the guide for?

The *Guide for Effective Referral of Development Applications* is designed to be used by local government consent authorities, referral entities from Commonwealth, state and local government and people drafting legislation.

For consent authorities and legislative drafters it explores when and how to refer a development application. For referral entities, it provides assistance as to when and how to comment, timeliness, quality and format of response.

Referral requirements vary in each jurisdiction. However, the referral of development applications to referral entities is a common step in most jurisdictions. This guide should be considered when developing and revising planning systems and internal processes.

For the purposes of this guide, a referral is intended to relate to any instance where a consent authority (for a development application) is required by legislation or other obligations, to seek either concurrence or advice from a second external agency (a referral entity). Referral entities are generally state government authorities, but can also be the Commonwealth government.

The guide has not been prepared to assist local government to manage issues associated with the process of ‘internal’ referrals. However some principles in the guide regarding clear instructions to the referral entity and clear responses from any referral entity may assist councils.

The responses provided by jurisdictions to the Development Assessment Forum (DAF) survey questionnaire identified a significant amount of commonality in the respective referral processes. Many of the principles contained in this guide already form part of these systems.

What is the Leading Practice Model for Development Assessment?

The Leading Practice Model for Development Assessment in Australia was developed by the DAF to guide jurisdictions in developing efficient, effective, and nationally harmonised development assessment systems.

The Leading Practice Model includes ten leading practice principles for development assessment. Leading Practice Five is the most relevant to this guide.

- Only one body should assess an application, using consistent policy and objective rules and tests.
- Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process.
- Referral agencies should specify their requirements in advance and comply with clear response times.
What does Leading Practice Five seek to achieve?

Consent authorities often require input from a range of state and Commonwealth government agencies during the assessment of a development application. Having clearly established referral processes to manage this exchange of information can help to provide clarity and certainty to the applicant, the community, the consent authority and referral entities. The use of technology (ePlanning) has greatly assisted timely exchange of information among agencies.

Point 2 of Leading Practice Five states a referral authority should only be able to give direction where this avoids the need for a separate approval. The DAF recognise that this can be difficult when the outcomes of the referral are integral to the assessment of the development application. Referral entity advice is often sought in these instances. Examples of this are heritage areas, erosion and sediment measures or impacts on protected vegetation or waterways.

Ultimately, the DAF recommends that legislation should be designed to consolidate all approvals under a single assessment process, with the involvement of different statutory authorities (as described in the Leading Practice Model) being managed by the consent authority. This aims to ensure a consistent application of relevant, yet sometimes competing, policy objectives.

In practice, some applications in different parts of Australia still require approvals under a separate process to the planning approval. In these cases, the consent authority often seeks advice from these referral entities to avoid issuing planning approval for a proposal that may be refused or altered under separate legislation.
Part 2 – Guidelines

What are the important elements for the effective referral of Development Applications?

The referral process involves three parties:

1. The applicant;
2. The consent authority; and
3. The referral entity.

There are different types of referrals that exist within the planning system. It is important to determine the legal obligations for a referral to ensure that the relevant steps are completed.

A concurrence referral requires a consent authority to refer a development application to another entity and the consent authority must not proceed to determine the application without the response. The consent authority must act in accordance with the response.

A consultation obligation requires a consent authority to notify another entity that an application has been received, but there is no legal obligation to await their response before proceeding, nor is their response binding.

The key elements of an effective referral system are:

- Understanding the role and responsibility each party plays or has in the referral process;
- Defined referral entities for each application track or type;
- Clearly defined information requirements for development applications;
- Timeframes for responding to a referral request (or deemed support);
- Clear internal procedures for referral entities and the consent authority;
- Clear, concise and focussed referral advice;
- Referral entities defending their requirements or advice if appealed;
- Use of information communications systems and tailored business processes;
- The use of standard agreements to reduce the need for referral and improve consistency across like referral entities.

Based on the identified key elements the following steps are recommended as effective leading practices that can be incorporated into the processes of any consent authority or referral entity.
A. Identifying referral entities and information requirements

Identifying referral entities

The planning framework, including the Act, Regulation, and supporting development plans, codes or policies, should clearly identify the referral entities and the circumstances (i.e. the development types, activities, areas and processes) that are to be referred to them – including how applications to amend an approval should be managed.

The NSW planning legislation provides for ‘integrated development’ (Part 4, Division 5). The Act specifies a range of secondary approvals under associated NSW legislation and a process whereby a development application must be referred to the relevant authority, such as the environment department, during its assessment. The legislation also sets out the timeframes for the consent authority and the referral entity, and the limitations on the consent authorities’ powers to determine an application without a response.

Mandatory referral requirements for each development track or type should be clearly stated in the legislation or subordinate instruments.

Timeframes

The legislation or agreed procedures should clearly state the timeframes for:

- a consent authorities to refer an application that requires a response from a referral entity
- the referral entity to respond.

To ensure the timely assessment of a development application it is essential that the consent authority refer an application onto a referral entity at the earliest time possible. This may be immediately on lodgement, or within a prescribed time after receiving all the required information.

In NSW the integrated development provisions requires a referral to be forwarded by the consent authority, to the referral entity within 14 days of lodgement of the application. The legislation also provides a time for the referral entity to respond, either requesting further information or with a determination.

The legislation should also state the consequence of not responding to a referral request and if a nil or late response will be deemed support of the application. For example, can the consent authority proceed to determine the application without the requested advice where they exceed the prescribed timeframe?

This element has been identified as a leading practice approach in the Australian Government Productivity Commission report, ‘Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment’, p468, 16 May 2011.
The Western Australia Planning Commission (WAPC) is required by s142 of the Planning and Development Act 2005 to refer subdivision applications that may affect the functions of a local government, public authority (such as the emergency management, environment, health, heritage, Indigenous affairs, roads, etc., agencies) or service provider (such as the electricity, gas, telecommunications, water, etc., utilities) for objections and recommendations and to consider any objections or recommendations.

A local government, public body or utility services provider receiving such an application is to, within 42 days of receipt or within such a longer period as the WAPC allows, forward to the WAPC a memorandum in writing containing any objections to, or recommendations in respect of, the whole or part of the application.

Where the local government, public authority or utility services provider does not forward a memorandum within the 42 days specified, the WAPC may determine that it is to be taken to have no objections or recommendations to make or advice to give.

Information to be submitted with a development application

The referral information requirements should be developed in consultation with the referral entities. The referral entities must be advised what stage in the planning process this referral will occur and how their advice on the information provided by the applicant will be used in the assessment process.

The information requirements should be clear and readily available to applicants when preparing their applications. If the information provided is not sufficient, the legislation should provide the opportunity to either reject the application prior to referral, or the referral entity should have the capacity to request further information to enable them to provide well considered advice.

In some cases the applicant may be unaware of the referral requirement or the application may not be complete at the time of lodgement. In these circumstances the consent authority should take the necessary steps to advise the applicant of the information required and advise that the referral cannot be made until the additional information is provided.

The legislation or agreed procedures should clearly outline the timeframes for requesting additional information and the need for requests to be made in writing to ensure all information is clearly conveyed to the consent authority and the applicant.
Ability to waive formal referral

There should be opportunity for the applicant to seek endorsement for a proposal from a referral entity prior to submission of a DA to negate the need for the consent authority to refer the application when received. Time limits for the validity of any endorsement should apply and be clearly stated in legislation. Legislation should be clear on when this option is available.

The use of standard agreements can further streamline the referral process, by clarifying deemed to satisfy provisions etc.

South Australia’s development legislation allows for an applicant to seek preliminary advice and agreement from a referral agency before lodging an application with the planning authority. The agreement specifies the matters, relevant to the agency, that have been considered. A Pre-Lodgement Agreement, if signed by both parties, precludes the need for a referral to that body during the assessment process. A development application, along with the agreement, must be lodged with the planning authority within three months of the agreement being signed. The agreement does not bind the planning authority to approve a development application.

Established boundaries

Clear boundaries on what elements referral authorities can comment on will avoid duplication of task and cross purposes. Where the referral authority has statutory responsibilities, the advice should be limited to that role.

In the ACT the Environment Protection Authority provides comments on matters relevant to their legislative and compliance responsibilities. The Conservator of Flora and Fauna provides comments on compliance with, or requirements of, the Tree Protection Act and the Nature Conservation Act.

Where the referral entity’s role is a long term administrative responsibility relevant to the proposal, (e.g. ongoing environmental licensing by an Environmental Protection Authority) the comments should be limited to that role.

All comments should be in accordance with any approved standards or guidelines published or adopted by the referral entity in relation to the development type or referral issue (e.g. Urban Infrastructure Design Standards or Australian Standards).
B. Responses from referral entities

Content of response

The response from a referral entity should clearly state whether the application is supported with or without conditions or comments, or not supported.

If a development application cannot be supported in the form proposed, the response from a referral entity should clearly set out the reasons for this. If appropriate, advice on possible amendments that would enable the development application to meet their requirements should be included in the response. This includes direct reference to standards or sections of legislation.

In Victoria, the legislation ensures that the referral authority clearly articulates whether or not it supports an application. Section 56(1) of the Planning and Environment Act 1987 specifies that the referral authority may advise the responsible authority that:

- it does not object to the granting of the permit; or
- it does not object if the permit is subject to the conditions specified by the referral authority; or
- it objects to the granting of the permit on any specified ground.

Entities often provide comments on elements of projects that are technical and outside the area of expertise of the assessing officer for the consent authority. The response should be concise and focused and should not contain comments outside of the area of responsibility of the entity. The assessing officer should be able to easily interpret the response and determine what actions, modifications or conditions need to be imposed.

Given this, it is important for consent authorities that referral entities are available to defend their requirements or advice if appealed.
Conditions versus advice

Processes and procedures that clearly state what matters are appropriate to be included as conditions of approval contribute to an effective system for both the consent authority and the referral entity.

Legislation should clearly identify whether the referral entity is required to provide conditions of approval, reasons for refusal or advisory information only.

Where conditions are provided these must have a legal basis under relevant planning legislation or other legislation. Conditions relating to post-occupancy matters that do not fall to the consent authority to monitor should be managed through an alternative process.

In some instances it is unclear whether a referral entity has provided advice or conditions. A possible test for determining if it is appropriate to include referral input as a condition in a development application decision is establishing who is responsible for compliance of matters in the conditions. If the advice relates to legislation or standards which are administered by a body other than the consent authority or through a separate process, then the item should be included in the development application decision as advice only. In the Northern Territory, all development applications are referred to the local authority (Council) and other relevant referral agencies identified by Development Assessment Services of the Department of Lands and Planning. Comments from all of the referral agencies including Councils must be received within 14 days of notification and are considered by the consent authority as advice only.

Standard conditions for use by the consent authority have been developed in consultation with the referral agencies to address their primary concerns such as services, infrastructure provision and easements.

Standard Conditions

Conditions that are frequently used should be standardised and agreed to by both the referral entity and the consent authority. This further develops the understanding of the respective roles and responsibilities each party plays in the process.

When providing advice on a development application, the entity should specify in their response the conditions that are relevant to the proposal. There should be the capacity for the referral entity to request conditions are imposed relevant to the proposal. The wording of any conditions should be provided by the referral entity.

Unless the legislation requires concurrence from a referral entity, the consent authority is the final decision maker on whether or not the requested conditions are appropriate to the approval and the manner in which they will be applied.

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1 This has been identified as a leading practice approach in the Australian Government Productivity Commission report, ‘Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment, page 468, 16 May 2011.
Response format

An agreement between the consent authority and referral entity on the format of responses can contribute to the effectiveness of the referral process. One way of doing this is by developing customised templates which include development application numbers, block and plan references, standard wording and parts of legislation and standards that applications are regularly assessed against.

Exchange of information

Best practice administration of the referrals process includes making use of Information Communications technology to reduce the administrative burden associated with copying and circulating multiple sets of documents and plans; enabling multiple referral authorities to consider matters concurrently and which also assist in workflow management and version control. Measures to assist the effective exchange of information between consent authorities and referral entities include:

- A defined location (group email box or other electronic system) where all referrals and referral advice is sent and received;
- Naming conventions for emails and documents when requesting and responding to referral requests;
- Specify which electronic planning and information systems are preferred for ease of information transfer, including establishing maximum file sizes and file formats;
- Developing standard templates for referrals and response format including essential information elements;
- Clearly state in the body of the referral request the purpose of the referral including reference to parts of legislation where appropriate, the contact officer for the application, and the date comments are due;
- Procedures for the transferring of relevant fees.

In the Northern Territory, all circulations to referral agencies occur electronically with referral agencies able to view applications and submit their comments directly into the Integrated Land Information System (ILIS). Applicants through the use of the web based ‘Development Applications Online’ which interfaces with ILIS receive notification and a copy of the referral agency comments automatically.

The only exception to this process is applications that trigger assessment under the Environmental Assessment Act. In this instance the consent authority must await the outcome of the environmental assessment process before it can determine the application. This is to ensure that recommendations made following the environmental assessment process can be considered by the consent authority for incorporation as conditions on the development consent.
About the Development Assessment Forum

The Development Assessment Forum (DAF) was formed in 1998 to recommend ways to streamline development assessment and cut red tape - without sacrificing the quality of the decision making.

The Forum’s membership includes the three spheres of government - the Commonwealth, State/ Territory and Local Government; the development industry; and related professional associations.

The DAF Plenary meets two to three times a year in different jurisdictions. A Working Group progresses the work of the DAF between Plenary meetings, supported by a number of project working groups as required.

DAFs work program is developed annually with projects undertaken directly by members, or where appropriate, consultants. The DAF’s work program stems from the Leading Practice Model for Development Assessment, which provides a model for national development assessment reforms for Australia.

The Development Assessment Forum (DAF) has prepared a number of reports and guides in relation to the development assessment processes of the Australian government, state and territory governments and local government.

More information on the work of the DAF can be found online at www.daf.gov.au